IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 321 OF 2007

IN

NOTICE OF MOTION NO. 28 OF 2007

IN

SUIT NO. 25 OF 2007

Jayesh Khimji Haria & Ors. .. Appellants

V/s

Gautam Ramanlal Tolat (since deceased) & Ors. .. Respondents

Mr.Y.S. Jahagirdar, Senior Advocate i/b Mr.R.D. Suryawanshi for the Appellants.

Mr.D.D. Madon i/b Gajaria & Co. for the Respondents.

CORAM : R.M.S. KHANDEPARKAR & D.G. KARNIK, JJ.

DATE : 30TH APRIL 2007

P.C. :

1. Heard. Admit.

2. By consent, the appeal is heard forthwith. Advocate for the Respondents waives service.

3. The appeal arises from the order dated 16th March 2007 passed in Notice of Motion No.28 of 2007 in

Suit No.25 of 2007. The impugned order is sought to be challenged on the ground that there was no justification disclosed by the Respondents for directing the Appellants to deposit the entire amount in terms of the agreement during the pendency of the suit. Undisputedly, the property, which is subject matter of the suit, is in possession of the Appellants and would continue to be in possession of the Appellants during the pendency of the suit.

4. It is not necessary to go into the issue in detail which is sought to be raised in the matter. Suffice it to observe that the rights of the parties in terms of the agreement are yet to be decided and the suit being for specific performance, it is not necessary in each and every case that the Plaintiff should succeed for the relief for specific performance and the court is empowered to order payment of compensation in lieu of specific performance of the agreement. The availability of relief of specific performance would depend on the facts to be established by the Plaintiff. In order to succeed in getting the relief of that nature at the interim stage, suffice to ensure the parties that the proposed vendor is not prejudiced under the agreement, which is the subject matter of the suit. The vendor is assured the amount in terms of the agreement and in

terms of the decree. We do not find any justification for interference with the finding of the learned single Judge about the necessity of such assurance to the Respondents. However, taking into consideration the amount involved in the matter and in the interest of justice, it would be appropriate to allow the Appellants to furnish a bank guarantee instead of directing the Appellants to deposit the amount under the agreement. Evidently, the bank guarantee would be sufficient assurance to the Respondents about the amount which may become payable, if any, under the agreement in case the Appellants succeed in securing the decree in the suit. Viewed from this angle, it would be sufficient to modify the order to the extent that instead of direction to the Appellants to deposit the amount of Rs.2,21,50,000/- in court, the Appellants are permitted to furnish a bank guarantee in relation to the said amount and further keep the bank guarantee alive and enforceable during the pendency and till the disposal of the suit or any order that may be passed in the suit in that regard. Apart from this modification, no further interference is called for in the impugned order.

5. In the result, the appeal partly succeeds. Instead of directing the Appellants to deposit the amount of Rs.2,21,50,000/- in court, the Appellants are

permitted to furnish a bank guarantee for the said amount on the condition that the bank guarantee shall be kept alive and enforceable during the pendency and till the disposal of the suit or any order that may be passed in the suit in that regard. Apart from this modification, no further interference is called for in the impugned order. The bank guarantee shall be furnished by 15th June 2007.

6. Appeal stands disposed of with the above order. There shall be no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)